Attorney Docket No.: 11984-005001

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Peter Shortridge et al. Art Unit : 3643
Serial No. : 09/641,114 Examiner : J. Gellner
Filed : August 17, 2000
Title : METHOD FOR MINIMIZING CONTAMINATION OF CROPS AND PRODUCTS DERIVED THEREFROM

13 Lamb Deal 7/23/02 Holmes

Commissioner for Patents
Washington, D.C. 20231

DECLARATION UNDER 37 CFR § 1.132 OF ROBERT H. PETERSON

I, Robert H. Peterson, declare as follows:

1. I am a citizen of the United States of America and presently live at 2121 Doswell Ave., St. Paul, MN 55108.

2. I received a Bachelor of Science degree in Agronomy and Plant Genetics from the University of Minnesota in 1956.

3. I was employed in the Department of Agronomy and Plant Genetics at the University of Minnesota from 1958 to 1996, retiring as a Senior Scientist. My responsibilities included corn breeding, testing of corn inbreds and hybrids, and studies of corn management.

4. I retired from my position at the University of Minnesota in 1996. I currently work as a part-time consultant to Brown Seed Farms, Inc., Bay City, Wisconsin and have done so since 1996.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

I hereby certify under 37 CFR §1.8(a) that this correspondence is being deposited with the United States Postal Service as first class mail with sufficient postage on the date indicated below and is addressed to the Commissioner for Patents, Washington, D.C. 20231.

July 1, 2002
Date of Deposit

Signature

Jill Hulso
Typed or Printed Name of Person Signing Certificate

5. I am an author or co-author on more than eight refereed scientific publications related to corn and corn breeding, and numerous non-refereed bulletins and articles.

6. I helped develop several corn inbred lines including A619, A632 and A679 during my career at the University of Minnesota. These lines were released to the public by the University of Minnesota in the 1970s and have been used in commercially successful corn hybrids since that time. In 1975, A632 was the most widely used corn inbred in the world. A632 sister lines and derivatives are still used in corn hybrids today. I also helped develop several corn germplasm populations including AS-A, AS-B, AS-D, AS-DK, AS-9 and AS-10. These populations were released to the public by the University of Minnesota and used as source material in the commercial seed industry to develop corn inbreds having the traits of earliness and general combining ability.

7. During my career at the University of Minnesota, I trained more than one hundred students in the practical aspects of corn breeding.

8. While at the University of Minnesota, I assumed responsibility for examining corn inbred foundation seed produced by the Minnesota Crop Improvement Association (MCIA), selecting for trueness to type. I carried out this responsibility for about twenty years. Corn inbred foundation seed was produced by the MCIA for sale by the commercial seed industry. Foundation seed was used by the commercial seed industry to produce hybrid seed for planting by farmers.

9. While at the University of Minnesota, I assumed responsibility for testing and maturity evaluation of all commercial corn hybrids registered in Minnesota. Registration of commercial hybrids is required under Minnesota law in order for a commercial hybrid to be sold and planted in the state. See, attached copy of § 21.90 – 21.901, Minnesota Statute. I carried out this responsibility for 38 years.

10. I received the Premier Seedsman award from the MCIA in 2000.

11. I am a member of the American Seed Trade Association (ASTA) and have attended the annual ASTA Corn/Sorghum Industry-Research Conference for about the past 25 years.

12. I have reviewed the specification and currently pending claims of application serial number 09/641,114. I have also reviewed the Office Action mailed October 23, 2001, for this application.

13. I have reviewed pages 449-458 of the book "Breeding Field Crops" 2d edition, 1979, by Poehlman (hereinafter "Poehlman"), as well as the Reuters article "ADM advises Farmers to Separate Their Genetically Modified Crops."

14. I have reviewed the seed laws of California, § 52251-52511, Annotated California Code. I have also reviewed the seed laws of Minnesota, § 21.80 – 21.92, Minnesota Statute. Copies of these seed laws are attached.

15. Based upon my training and experience at the University of Minnesota and my responsibilities at the Minnesota Crop Improvement Association, I am quite familiar with seed certification.

16. Seed certification is governed by state and federal seed laws. The state seed laws of California and Minnesota are, to my knowledge, typical of those promulgated in other states. Seed certification under these laws pertains to agricultural or vegetable seed purchased by farmers and growers for planting. Such seed is grown to obtain a crop. See § 52254, Annotated California Code. See also § 21.82, 21.83 and 21.87, Minnesota Statutes. Such seed can be certified as to the type (species), the varietal name, and the purity of the seed. See, e.g., § 52254.4 Annotated California Code and § 21.81 subd. 5 and 21.91, Minnesota Statutes. Such seed can also be labeled with the germination percentage or the date the germination test was conducted. See, § 52452, Annotated California Code and § 21.82 subd. 2, Minnesota Statutes.

17. The seed certification process discussed in Poehlman at pages 449-458 relates to seed certification as specified in seed laws such as those of California and Minnesota. See, e.g., Poehlman, page 453, right-hand column. The seed certification process discussed in Poehlman and specified in state seed laws is not applicable if the seed is not intended for sowing. See, e.g., § 52451(a), Annotated California Code and § 21.87(a), Minnesota Statute.

18. Pending claims 1-51 do not pertain to certification of seed intended for sowing or to plant breeding. For example, claims 1-51 do not recite plant breeding steps, such as crossing and selection of progeny. Claims 1-51 do not recite seed certification steps, such as determining percent germination. Seed certification as described in Poehlman is not a part of claims 1-51. In view of the above, and based on my training and experience, claims 1-51 do not pertain to certification of seed intended for sowing.

19. Pending claims 1-51 pertain to growing a crop, harvesting a crop and to processing the harvested crop. For example, claims 1-51 recite harvesting a crop and processing a crop.

20. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment or both, under § 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the instant patent application or any patent issuing thereon.

Dated: 6-4-02

Robert H. Peterson